STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF ROBERT L. MORRIS and ROBERT L. MORRIS DECLARATION OF TRUST, Plaintiffs-Appellants, v ROBERT GREGERY MORRIS and R.L. MORRIS & SONS CONSTRUCTION COMPANY, Defendants-Appellees.	UNPUBLISHED October 25, 2005 No. 262751 Kalkaska Probate Court LC No. 04-008299-CZ

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) in this case in which the sole cause of action alleged in plaintiffs' complaint seeks the imposition of a constructive trust relative to stock or almost $1,000,000 in life insurance monies received by defendants Robert Gregery Morris ("Greg") and R.L. Morris & Sons Construction Company ("company" or "corporation") following the death of the insured, Greg's father Robert L. Morris ("Robert"), who founded the company. Plaintiffs, Robert's estate and his trust, through co-personal representatives and successor trustees Rory Morris and Cynthia Morris, who are also Robert's children, wish to have the stock or a portion of the life insurance proceeds used to cover approximately $236,000 in estate taxes, plus administration costs, incurred on Robert's death. We affirm.

I. FACTS and PROCEDURAL HISTORY

A. Documentary Evidence

In 1973, Robert[1] founded defendant construction company, and the shares of stock in the corporation were owned by Robert and his soon to be ex-wife Janet. On their divorce in 1975,

[1] Robert is also referred to as "Bob" in this opinion where we quote relevant portions of various (continued…)

Janet's shares were assigned back to the construction company, leaving Robert with all of the outstanding shares and sole ownership. Siblings Greg, Rory, and Cynthia Morris are Robert's and Janet's three children.

In 1988, talks began regarding transfer of a minority interest in the construction company to Greg, who was involved in the business.[2] Pursuant to an October 31, 1988, stock pledge agreement between Robert and Greg, 49% of the company's stock was transferred to Greg.[3] For the purchase price of $50,000, with $5,000 of that amount paid in cash as a down payment and $45,000 to be paid pursuant to a note,[4] 32.67 shares of stock were sold to Greg. Additionally, 261.33 shares were gifted outright to Greg. In total, Greg ended up owning 294 shares under the agreement, reflecting 49% of the outstanding shares of stock. Robert remained the majority owner with 51% of the stock. Deposition testimony from the company's and family's attorney, George Bearup, along with a letter drafted by Bearup relative to the sale and gift in 1988, indicate that 49% of the corporation had or was given a value of about $400,000, that a market appraisal of the company performed before the sale showed that the equipment and machinery had a top value of $1,032,075,[5] that a 20% minority interest discount was applied to the $400,000, reducing the value of the total stock transfer (294 shares) to $320,000, that Greg would pay $50,000 of this amount, and that the remaining $270,000 worth of stock would be deemed a gift to Greg.[6]

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documents submitted to the trial court.

[2] Greg testified in his deposition that he began "running" the business as superintendent in about 1983 and that his father, by the 1980s, was no longer heavily involved in the day to day business operations.

[3] Greg testified that he had little involvement in the discussions regarding the transfer of stock. Robert wanted to make the transfer, and he worked with the attorneys and his friend Richard Larson in making the arrangements.

[4] The promissory note required $5,000 annual payments to be made until October 31, 1997, which payments were to be applied to the principal and accrued interest; the interest rate on the note was 10%. On October 31, 1997, any remaining unpaid balance was to be paid in full according to the note. It appears that the $45,000 note was paid in full, and the parties raise no issues regarding payment of the note.

[5] A 1989 letter from Bearup to an accounting firm indicates that the construction company had an appraised value of $800,000 as of March 1, 1988. In plaintiffs' brief, it is stated that the 1988 appraisal placed a value on the equipment and machinery alone at between $814,730 and $1,032,075. The appraisal itself does not appear to be part of the lower court record. Bearup's deposition testimony indicates that the appraisal was only an equipment appraisal and not a full appraisal of an operating business, which would entail consideration of accounts receivable, favorable contracts, goodwill, and debts. Greg's testimony provides that the appraisal, done sometime around 1986, reflected a sale value of $800,000 and a fair market value of around 1.2 million dollars.

[6] A May 9, 1988, letter from Bearup provides, in part, "To the extent that the value of the gift exceeds $10,000 in any one (1) year, the effect of the gift of the balance, i.e., $260,000, is that

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In conjunction with the 1988 stock transfer, Robert had Bearup prepare estate planning documents, which included a will and a declaration of trust, both dated October 18, 1988. A letter from Bearup to Robert regarding the documents provides:

> Third, I wish to confirm that the estate planning documents have been constructed in such a manner that your son, Greg, will pay all death taxes that arise upon your death. All death taxes include estate taxes of both a federal and state nature, Michigan inheritance taxes, and death taxes on any assets that may pass directly to another individual and outside the scope of your Will and Trust. . . . Greg is to bear all death taxes without exceptions under the instruments as drafted.

Our review of the tax paragraph found in the administrative provisions of the 1988 will reveals that the personal representative is to pay estate taxes from the residuary estate. We see no language suggesting that Greg is to bear the estate taxes. However, the trust provides that upon Robert's death, the successor trustee, Richard H. Larson,[7] is to distribute to Greg the title, rights, and interests in all of construction company's stock and securities, subject to certain conditions. The relevant condition was that Greg alone, and no other beneficiaries, was to pay or bear all estate taxes "associated with or caused by the transfer of such stock or securities[.]" Greg testified that he had conversations with his father about the estate plan and that he, Greg, was to pay the estate taxes "for the two reasons that I'd use[d] half his lifetime exemption and I was going to be getting the lion's share no matter how you split it of his estate when I would have been granted the 51% in his trust."

In 1995, Robert amended his will and trust.[8] With regard to the amendment of the will, the will now specifically provided that Greg would solely be responsible for all estate taxes,

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your federal unified and gift estate tax credit will be consumed by that amount. In other words, there should only be somewhere around $340,000 of assets that you can pass free from estate taxes at the time of your death[.]" Bearup testified that everyone was aware that the 1988 gift to Greg, because it exceeded $10,000, would ultimately cause a substantial tax on Robert's death. Greg testified that Robert had informed him that the gift had greatly depleted the lifetime gift tax exemption.

[7] According to the will, Robert bequeathed the residue of the estate to Richard Larson as successor trustee of Robert's trust to be added to and commingled with the trust property. Robert's trust is formally titled the "Robert L. Morris Declaration of Trust." According to Greg's deposition testimony, Larson worked for the company from 1986 through 2003 and handled bookkeeping and accounting matters.

[8] The documentary evidence indicates that the trust was also amended in 1993, but the parties do not argue that any matter of relevance arises out of this amendment. We do note that a document entitled "Unanimous Written Consent of the Board of Directors of R.L. Morris & Sons Constr. Co., Inc." was submitted to the trial court. This corporate document states that the shareholders, acting for themselves as well as on behalf of the company, "do hereby agree to be bound by the terms of Section IV of the First Amendment to the Robert L. Morris Declaration of Trust dated October 18, 1988, and first amended on May 3, 1993." Within section IV is the language which

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"whether or not the property with respect to which such taxes are levied or assessed is given, devised or bequeathed under my Will." Robert waived, on behalf of the estate, any rights to recover "any part of such administration expenses including, but not limited to taxes so paid, from any person who possesses at my death, or receives by reason of my death, an interest (legal or equitable), in such property other than Robert Gregery Morris."

In regard to the amendment of the trust, the trust now provided that the corporate stock (51% still held by Robert) would at first be set aside and maintained in a separate trust fund, and then, within a reasonable period of time following Robert's death, the shares of stock would be distributed to Greg "but only after the fulfillment of all other obligations and conditions imposed upon [the corporation], with respect to [Robert's] other children, and the Trustee, whether contained in this Trust, in the Bylaws of the corporation, or any other Stock Purchase Agreement, Voting Agreement or other restrictive agreement or instrument." The amended trust further stated that the distribution of stock to Greg was contingent on various conditions, and the one pertinent here provided as follows:

> 4.4.4 The Corporation shall loan to my son, Robert Gregery Morris, sufficient cash to enable my son to pay all federal and state death, inheritance or generation-skipping transfer taxes and any and all other taxes, penalties, interest, costs and expenses associated with or caused by the transfer of assets arising upon my death. All such taxes, penalties, interest, and charges shall be charged to and borne solely by my son, Robert Gregery Morris, or his successors and assigns, and the burden of such death taxes and expenses shall fall on this bequest of corporate stock, to the exclusion of any other beneficiary taking under this Trust, or the residue of the trust estate, if any, or my probate estate, or my non-probate estate, e.g., life insurance; SEP's; IRA's, ... It is my express intention and desire that all death taxes shall not be charged against the residue of the trust estate or directly or indirectly burden my other children, Cynthia Intfen, Rory Lee Morris, or my friend, Richard H. Larson, but such death taxes shall be exclusively (100%) charged to and borne by my son, Robert Gregery Morris.

Bearup testified in his deposition that the language of the trust in 1988 only required Greg to pay estate taxes directly associated with the transfer of Robert's 51% of the corporation to Greg, but he was not responsible for any remaining estate taxes with respect to other property that passed on Robert's death. Bearup stated that the subsequent amendment of the trust resulted in Greg being responsible for all estate taxes.[9] At the time, according to Bearup, he had no discussions with Robert about a possible sale of Robert's 51% interest to Greg.

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provides that Greg is to pay all death-related taxes associated with the transfer of stock to himself. Greg had no recollection of signing the above-referenced corporate document as he often signed corporate documents presented to him simply because he was asked to sign them by his father or Richard Larson.

[9] Bearup stated, "I'm not sure whether that was in 1993 or 1995, but somewhere along the line, we changed it from Greg paying estate taxes only on the stock to Greg paying all estate taxes."

On March 23, 2000, a stock redemption agreement was executed between Robert, as trustee of the 1995 amended trust, and the corporation, pursuant to which Robert sold all of his stock (51%) and the corporation redeemed the stock for the price of $1,000,000.[10] The corporation was also required to pay Robert $200,000 on an outstanding promissory note between Robert and the corporation. The agreement provides that it supersedes the 1988 agreement in which Greg received his 49% interest. Greg, as the corporation's vice-president, signed the agreement on behalf of the corporation, and he now had sole ownership of the construction company.

Greg executed an affidavit, and he averred that the corporation borrowed $1,200,000 from Empire National Bank in order to effectuate the redemption of Robert's stock because the corporation otherwise lacked sufficient funds to complete the purchase. Greg further averred that he and his wife were required to personally guarantee the repayment of the loan, and they gave the bank a second mortgage on their personal residence and a first mortgage on approximately 70 acres of vacant land. Additionally, Greg's wife's revocable living trust gave mortgages to the bank on the two other real estate parcels, and Greg executed a security agreement in which he pledged a life insurance policy on himself in the amount of $500,000 and marketable securities.

Greg testified in his deposition that in 1996-1997, when his father was first considering selling the business, a potential buyer was given the figure of approximately 2.5 million dollars to complete the sale for the entire business enterprise, with Greg being kept on to run the operation; no agreement transpired. Greg additionally stated that, in 1999, in regard to another potential sale that ultimately did not transpire, an appraisal had reflected that the company's equipment and machinery had a sale value of about 1.4 million dollars and a fair market value of 1.7 million, although the numbers may have been lower than that, but still over a million dollars. Greg indicated that the value was on 100% of the company's assets; however, the appraisal did not include such items as "blue sky," client lists, and accounts receivable. Cynthia Morris testified in her deposition that she lived out of state and was not very familiar with the ongoing business operations, but she did speak with her father on the phone regularly, and he indicated to her that an appraisal of the company reflected a value of 3.1 million dollars. She also stated that her father wanted out of the business in the late 1990s and that he no longer trusted Greg or Richard Larson. Cynthia further asserted that her father told her in either 2001 or 2002 that it was his intent that Greg pay all estate taxes. During this conversation, Robert also indicated that he needed to modify his will and trust and that Greg had already received everything that he was going to receive. Cynthia testified that it was common knowledge that Greg was going to pay the estate taxes. She additionally testified that in either 2001 or 2002, Greg told her that their father still thought that Greg was going to pay the taxes, but he had no intention of doing so.

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[10] The agreement indicates that at the time of the redemption, Robert had 306 shares and Greg had 294 shares of company stock, for a total of 600 shares.

Robert passed away in 2003. The estate, of course, no longer held any interest in the company, but was comprised of some other assets. Plaintiffs maintain that there was in excess of $236,000 in estate taxes, plus administration costs. There were two life insurance policies on Robert's life. One of the policies, which paid out approximately $570,000 in proceeds, was purchased by the corporation, with the corporation being the named beneficiary. The second policy, which paid out approximately $405,000, was purchased by the corporation and Greg, with Greg being the designated beneficiary. The central focus of plaintiffs' position, below and here, is that the insurance proceeds should have been used to defray the estate taxes and administrative costs.

Bearup testified as follows regarding the estate taxes and life insurance:

> As time passed and estate taxes became more of an issue, if you will, that was certainly part of the understanding in the documents that I drafted was that because Greg was going to be bequeathed a controlling interest in the corporation, Bob felt that Greg should pay the estate taxes. Now, whether it's because there was life insurance or because it was simply a large controlling interest in the corporation, I really don't know.[11]

Bearup did state that it was his understanding that the life insurance would be used, in part, to pay estate taxes, but he also testified that "part of the insurance was to be used as well or had been purchased or the insurance agent had decided to tell Bob that it was [to] be a great deferred compensation mechanism[.]" Bearup further testified that he never recalled any discussion where Robert specifically stated that he was imposing the tax burden on Greg because Greg was receiving the stock gift.

Regarding any taxes on the life insurance proceeds payable to Greg and the corporation, Bearup asserted that the proceeds would be "federal estate tax-free[.]" Finally, Bearup testified:

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[11] As part of follow-up questioning, Bearup testified:

> *Q.* Do you recall in your estate planning process whether Bob told you that because of this life insurance, Greg was going to be able to pay all the taxes, he had the funding mechanism in place for it?
>
> *A.* Not words to that effect. I mean, I think that whether it was said or implicit, the way Bob's 1995 estate planning trust was set up, there was going to be some insurance paid to the . . . corporation, which in turn is going to be controlled by Greg, and that's presumptively where Greg has access to the liquidity to pay the estate tax.

Q. Is it . . . a reasonable interpretation based on the 1995 will and trust that a personal representative or trustee should seek that money [for estate taxes] from Greg Morris?

A. I really don't know. It's a plausible interpretation. I mean, that's the direction contained in the document, that the document was predicated on the assumption that Greg was going to inherit 51 percent or be bequeathed 51 percent. The document does not anticipate what's happened, which is that Greg bought the stock prior to [his] father's death. And so we have a "what if" . . . .

We note that a December 1988 letter from Bearup to Robert and Greg regarding one of the life insurance policies on Robert's life provides that the policy "is primarily earmarked by Greg to pay estate taxes on Bob's death." A 1988 construction company document regarding various life insurance policies provides that the two policies on Robert's life benefit the company by defraying estate taxes on Robert's death and by paying off any outstanding loans. A 1995 modified version of this same document retained the language that the two policies benefit the company by defraying estate taxes on Robert's death and by paying off any outstanding loans. The record also contains a 1988 letter to Richard Larson from underwriters, which states that a policy owned by the corporation was originally intended to provide deferred compensation for Robert, but the letter makes reference to the possibility of the policy being owned by Greg or Robert's trust "to pay for the estate tax." Additionally, a January 1988 corporate document, apparently relative to a meeting, makes reference to life insurance and Greg receiving "$400,000 for taxes[.]"

Greg testified that he could not recall any specific conversations regarding life insurance. Greg was aware of the existence of policies on his father's life, but they had nothing to do with the estate as far as he knew. Greg stated that, as to the $405,000 policy on which he was the beneficiary, the premiums were paid via a "split dollar arrangement" with the corporation, in which the premium check for the coverage came from the corporation, but part of those monies came by way of reductions in Greg's compensation.[12] With respect to the $570,000 policy on which the corporation was the beneficiary, the corporation paid the premiums. Greg testified that he did not recall any discussions about the policies being earmarked for estate taxes; rather, they were policies demanded by the banks in relation to corporate transactions.

Greg additionally testified that the corporation used the proceeds from the corporation's policy on Robert to pay down on the debt that was created when the corporation borrowed money to purchase or redeem Robert's 51% interest. The corporation's debt was thereby reduced to about $400,000. No federal income tax was paid on the life insurance proceeds.

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[12] Plaintiffs submitted a document entitled, "Sample Split Dollar Corporate Resolution," which references a policy on Robert's life with a handwritten note next to the reference stating, "Used for Greg to pay estate taxes upon Bob's death."

Cynthia Morris testified that she and her brother Rory each received approximately $550,000 from the estate after the estate taxes were paid.

B. Defendants' Motion for Summary Disposition

As noted earlier in this opinion, plaintiffs filed a complaint premised on the facts recited above, alleging a single cause of action that requested the imposition of a constructive trust in order to procure funds to cover the estate taxes. Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that the imposition of a constructive trust would be improper because, in light of the 2000 sale of Robert's 51% interest in the company leaving Greg as sole owner as opposed to the initially contemplated inheritance of Robert's interest, Greg had not acted contrary to Robert's intentions, Greg had not been unjustly enriched, a constructive trust would unjustly enrich plaintiffs, and because the erosion of the lifetime gift credit alone cannot form the basis for a constructive trust.

C. The Trial Court's Ruling

In a written opinion, the trial court first summarized the facts, reviewed principles concerning (C)(8) and (C)(10) motions, and cited the law regarding constructive trusts. The trial court then ruled that plaintiffs failed to illustrate how defendants engaged in fraud or any other wrongdoing, nor had plaintiffs shown that Greg's continued possession of the stock and insurance proceeds constituted unconscionable conduct or unjust enrichment. The trial court focused on paragraph 4.4.4 of the 1995 amended trust, noting that it required Greg to pay the estate taxes if he was bequeathed stock; however, this never occurred where Greg bought out his father's interest three years prior to his death. The court opined that the trust document did not anticipate which party or entity would bear the burden of estate taxes if the stock did not pass to Greg on Robert's death. Therefore, it cannot be said that defendants acted contrary to Robert's wishes. The trial court additionally ruled that Greg did not owe any type of fiduciary duty to his sister and brother. Furthermore, the court found that a substantial portion of the estate's proceeds, which were distributed to Rory and Cynthia, originated from the sale of the 51% stock interest. The trial court ruled that the 2000 stock redemption agreement imposed no obligations on Greg to pay the estate taxes, and it superseded all prior agreements between the parties. In conclusion, the trial court found no basis to impose a constructive trust, and it granted the motion for summary disposition pursuant to both MCR 2.116(C)(8) and (10).

II. ANALYSIS on APPEAL

A. Standard of Review and Applicable Tests Relative to Summary Disposition

A trial court's ruling on a motion for summary disposition is reviewed de novo by this Court. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). In addition, when reviewing an equitable determination reached by a trial court, this Court reviews the trial court's conclusion de novo. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). A summary disposition motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Hazle, supra* at 461. After reviewing the documentary evidence in a light most favorable to the nonmoving party, the trial court may grant a motion under MCR

2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003)(citations omitted). MCR 2.116(C)(8) provides for summary disposition where "[t]he opposing party has failed to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may only consider the pleadings in rendering its decision. *Id.*

B. Constructive Trusts

"A constructive trust is in reality not a trust, but rather a judicial remedy to which resort is had after the fact and arises by operation of law." *Grasman v Jelsema*, 70 Mich App 745, 752; 246 NW2d 322 (1976)(citation omitted). A constructive trust may arise out of unconscionability and unjust enrichment; the property need not be wrongfully acquired. *Id.* When property has been acquired under such circumstances that the legal titleholder may not, in good conscience, retain the beneficial interest, equity converts the titleholder into a trustee. *Kent v Klein*, 352 Mich 652, 656; 91 NW2d 11 (1958). A constructive trust is the mechanism through which conscience of equity finds expression. *Id.*[13] Constructive trusts "are imposed solely where a balancing of equities discloses that it would be unfair to act otherwise." *Children of the Chippewa, Ottawa & Potawatomy Tribes v The Regents of the Univ of Michigan*, 104 Mich App 482, 492; 305 NW2d 522 (1981). In *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993), our Supreme Court stated:

> A constructive trust may be imposed "where such trust is necessary to do equity or to prevent unjust enrichment . . . ." Hence, such a trust may be imposed when property "'has been obtained through fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one's weakness, or necessities, or any other similar circumstances which render it unconscionable for the holder of the legal title to retain and enjoy the property . . . .'" Accordingly, it may not be imposed upon parties "who have in no way contributed to the reasons for imposing a constructive trust." The burden of proof is upon the person

[13] The *Kent* Court further stated:

> It is enough, to compel the surrender, that one feed and grow fat on that which in good conscience belongs to another, that he enjoy a windfall resulting in his unjust enrichment, that he reap a profit in a situation where honor itself furnishes rich reward, where profit, the mainspring of the market place, is both foreign and inimical to the trust reposed. These principles have been firmly established in this jurisdiction for many years and we do not propose to depart therefrom. [*Kent, supra* at 657.]

> seeking the imposition of such a trust. [Citations omitted; omissions in original.][14]

A court may impose a constructive trust where the facts justify it even if not specifically requested by a party. *In re Swantek Estate*, 172 Mich App 509, 517; 432 NW2d 307 (1988).

C. Plaintiffs' Arguments on Appeal

Plaintiffs argue that the trial court erred in reading paragraph 4.4.4 of the 1995 amended trust in isolation, where the unequivocal language of the 1995 will, Bearup's 1988 correspondence, the notations on corporate documents related to life insurance policies, the deposition testimony of Cynthia Morris, the 49% gift to Greg in 1988 that depleted the lifetime gift exemption, the 1993 promise by Greg to abide by the trust (corporate unanimous written consent), the receipt of nearly $1,000,000 in life insurance benefits, and the sale of Robert's 51% interest at a discounted price, all taken together, establish that Greg should pay the estate taxes as intended by his father and minimally create a factual issue as to whether a constructive trust should be imposed. Plaintiffs maintain that a constructive trust is appropriate precisely because the 1995 amended trust does not specifically spell out or contemplate who should incur the taxes in the current scenario, when one considers all of the facts cited in the preceding sentence. According to plaintiffs, the court erred in finding that Cynthia and Rory would receive a windfall with the imposition of a constructive trust and that Greg did not benefit from Robert's actions. Finally, plaintiffs argue that the 2000 stock redemption agreement did not alter Greg's obligation to pay all estate taxes.

D. Discussion and Holding

We hold that, while plaintiffs may have sufficiently pled a cause of action for purposes of MCR 2.116(C)(8), which we decline to specifically address, they failed to show the existence of a genuine issue of material fact under MCR 2.116(C)(10) with respect to the imposition of a constructive trust. Reasonable minds would agree that it would not be unjust and unconscionable for defendants to retain the life insurance proceeds and stock even when viewing the evidence in a light most favorable to plaintiffs.

In the context of the law with regard to constructive trusts, we initially find that there is no evidence showing fraud, misrepresentation, concealment, undue influence, duress, taking advantage of one's weakness, or any other action that could reasonably be coined "wrongdoing." Rather, the equitable principles argued here are more in line with unjust enrichment, unconscionability, or lack of good conscience. Furthermore, it must be remembered that, although defendant Greg Morris is the sole shareholder in defendant construction company, the

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[14] In *Chapman v Chapman*, 31 Mich App 576, 580; 188 NW2d 21 (1971), this Court stated that breach of fiduciary or confidential relations could warrant a constructive trust remedy.

company is a separate entity and a separately named defendant; the two defendants, for purposes of the law, are not one in the same.

Plaintiffs seek imposition of a constructive trust relative to stock or almost $1,000,000 in life insurance proceeds received by defendants, to the extent necessary to defray the estate taxes. It is clear to this panel that, pursuant to paragraph 4.4.4 of the 1995 amended trust, Greg would have no legal obligation to pay the estate taxes if the contemplated bequeathing of the 51% interest did not take place, as was the situation after Robert sold his stock back to the corporation. The inheritance of stock by Greg on Robert's death was contingent on Greg paying the estate taxes. Because Greg did not receive any stock under the trust provisions when Robert died, there no longer remained a viable "legal" basis to require Greg to pay the estate taxes. Turning to equitable principles, there is no basis in equity to impose a constructive trust. The corporation redeemed the shares at a substantial price, and Greg and his wife personally guaranteed the loan used to pay for the stock, allowing liens to be placed on numerous assets at great personal risk. This turn of events was costly to defendants and simply not contemplated when estate planning documents were drafted. We reject plaintiffs' assertion that the 2000 stock redemption price did not fairly or adequately equate to the actual value of the corporation. Plaintiffs have failed to present sufficient and relevant documentation to support this proposition, such as actual appraisals, and their reliance on Greg's deposition testimony that the equipment and machinery alone had a value of around 1.5 million dollars, ignores the fact that Greg also testified that said value was for all of the equipment and not a 51% interest in the equipment. The documentary evidence simply does not support a finding that the stock redemption constituted a sham. Indeed, in regard to the potential sale in 1996 or 1997 that fell through, a sale price of 2.5 million dollars was bandied about, and 51% of that figure would be $1,275,000. Moreover, a review of the 2000 stock redemption agreement indicates that Robert also received a 1998 Jeep Grand Cherokee, that Robert and the corporation entered into lease and consulting agreements, and that the corporation would provide Robert with medical and dental insurance for five years.[15]

We recognize that there was evidence presented that the insurance policies on Robert's life were procured, in whole or in part, in order to defray the costs associated with estate taxes on his death. These policies named Greg and the corporation as the beneficiaries, and there was evidence that they were so named with the intent that the proceeds be utilized to pay estate taxes. We additionally acknowledge that, in regard to the 1988 stock transfer to Greg, he received a 49% interest in the corporation that was gifted to him for the most part, and this gifted transfer impacted taxes on Robert's death. Consideration of the life insurance policies and the 1988 stock gift might lead one to conclude that it would be unjust for defendants to keep the insurance proceeds and the stock without contributing to the estate taxes. However, it is abundantly

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[15] The language in the 1995 amended will does not change our stance. The will must be read hand in hand with the amended trust. Moreover, it was the trust that spoke specifically of the transfer of stock to Greg, and it was the trust that held ownership of the stock which represented Robert's 51% interest.

evident from review of the entire record that use of the life insurance policies for estate taxes, assuming such was the intended purpose of the policies, contemplated Greg's future inheritance of the majority interest in the corporation upon Robert's death and not the corporation's outright purchase of the stock. Without the inheritance or gift of the majority interest, and considering the million plus dollars in cost to redeem Robert's shares, it cannot be deemed unjust or inequitable for defendants to retain the insurance proceeds. Defendants funded the premiums for the policies for several years, and they are not *unjustly* enriched under the circumstances. With respect to the 1988 stock transfer, there was no evidence that this transfer in and of itself, which was partially paid for by Greg, was the basis for having Greg pay toward future estate taxes; the burden of proof was on plaintiffs as they sought the imposition of a constructive trust. In fact, even in 1988 when the 49% interest was transferred, the estate planning documents tied the language saddling Greg with estate taxes to the future inheritance of the remaining 51% interest. We conclude that defendants in no way contributed to the reasons argued for imposing a constructive trust. Furthermore, the 2000 stock redemption enlarged Robert's estate as to funds and assets that would not be transferred to Greg on Robert's death. There is no evidence that Greg has acquired monies or assets from Robert's probate estate or trust since Robert's death, while Cynthia and Rory Morris have each received approximately $550,000 after the payment of estate taxes. Finally, the record evidences that Greg has essentially been running the construction company for over 20 years, putting in an enormous amount of sweat equity, and we find, as a matter of law, no reasonable or appropriate basis to impose a constructive trust that would, if instituted, benefit those not involved in the business and who have already received a healthy amount of money as a result of their father's death.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy